

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code §§ 47-2836, 47-2851.03a(o), and 47-2851.20, hereby gives notice of the intent to adopt, in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, amendments to Chapter 12 (to be re-titled “Sightseeing Tour Companies and Guides”) of Title 19 of the District of Columbia Municipal Regulations (DCMR). This rulemaking amends sightseeing tour guide licensing rules and administrative procedures in order to reflect changes in the law and the profession.

This Notice of Proposed Rulemaking supersedes proposed regulations published in the *D.C. Register* on December 5, 2008 (55 DCR 12284).

19 DCMR Chapter 12 is amended to read as follows:

CHAPTER 12 SIGHTSEEING TOUR COMPANIES AND GUIDES

Secs.

1200	General Definitions
1201	General Licensure Requirements
1202	Application for Sightseeing Tour Company License; Applicable Regulations
1203	Application for Sightseeing Tour Guide License
1204	Requirements for Sightseeing Tour Companies
1205	Requirements for Sightseeing Tour Guides
1206	Complaint and Contact Information
1207	Prohibition on Vending
1208	Denial, Suspension, or Revocation of Licenses
1209	Penalties

1200 GENERAL DEFINITIONS

- 1200.1 Whenever used in this chapter, the term “tour guide” or “sightseeing tour guide” shall mean any person who engages in the business of guiding or directing people to any place or point of interest in the District, or who, in connection with any sightseeing trip or tour, describes, explains, or lectures concerning any place or point of interest in the District to any person.
- 1200.2 Whenever used in this chapter, the term “sightseeing tour company” shall mean a business that employs a sightseeing tour guide.

1201 GENERAL LICENSURE REQUIREMENTS

- 1201.1 No person shall offer to act as a sightseeing tour guide on the roads, sidewalks, public spaces, or waterways of the District of Columbia unless the person holds a valid sightseeing tour guide license issued by the Department of Consumer and Regulatory Affairs (Department).
- 1201.2 No sightseeing tour guide shall engage in business or do business with a company or individual not properly licensed by the Department as a sightseeing tour company.
- 1201.3 No business or entity shall offer, for a fee, to conduct walking tours or tours where customers operate self-balancing personal transport vehicles, mopeds, or bicycles unless the business or entity is licensed by the Department as a sightseeing tour company.
- 1201.4 No person other than a licensed sightseeing tour guide shall, by the use of a uniform or part of a uniform, or by the use of insignia, device, word or words, or sign, indicate that he or she is engaged in the business of furnishing a sightseeing tour guide service, either on his or her own behalf or on behalf of another.
- 1201.5 No person, other than a licensed sightseeing tour company or sightseeing tour guide may use the words "sightseeing," "tours," "guide," or any combination of these words, to advertise the availability of sightseeing tour services. This prohibition shall not apply to the use of these words as part of the identifying lettering on vehicles coming into the District or to a tour that is not conducted for profit or compensation.

**1202 APPLICATION FOR SIGHTSEEING TOUR COMPANY LICENSE;
APPLICABLE REGULATIONS**

- 1202.1 An application for a license to engage in business as a sightseeing tour company shall be made to the Director of the Department of Consumer and Regulatory Affairs (Director) on a form prescribed by the Director.
- 1202.2 A sightseeing tour company shall apply for a General Business basic business license and shall be subject to the regulations in section 1203 of this chapter and the regulations in chapter 38 of Title 17 of the District of Columbia Municipal Regulations.

1203 APPLICATION FOR SIGHTSEEING TOUR GUIDE LICENSE

- 1203.1 A person applying for a sightseeing tour guide license shall:
- (a) Be at least eighteen (18) years of age;
 - (b) Be proficient in the English language; and

- (c) Not have been convicted or have served all or part of a sentence within the past five (5) years for a felony, or an attempt to commit a felony, of the following types:
 - (1) A felony involving violence, the threat of violence, reckless driving, or any other action impacting the safety of others, if the Director determines that the record of such a felony indicates that licensure of the applicant as a sightseeing tour guide may pose a reasonable threat to the safety of others; or
 - (2) A felony involving a breach of trust or dishonesty, unless the Director determines that the applicant is a person of sufficient honesty and integrity to act as a sightseeing tour guide.

1203.2 An applicant for a sightseeing tour guide license shall make a sworn statement as to the veracity of the statements contained in his or her application and pay all required fees related to licensure.

1203.3 An applicant for a sightseeing tour guide license must pass an examination under the supervision of the Director, or the Director's designated agent, covering the applicant's knowledge of buildings and points of historical and general interest in the District.

1204 REQUIREMENTS FOR SIGHTSEEING TOUR COMPANIES

1204.1 A sightseeing tour company licensee engaged in the operation of sightseeing tour vehicles in the District shall obtain the necessary approvals of the District Department of Transportation, the District Department of Motor Vehicles, and the Washington Metropolitan Area Transit Commission.

1204.2 The approval of sightseeing tour vehicles required by § 1204.1 shall be evidenced by the display on each vehicle of the applicable license(s) or certificate(s) issued by the relevant government agencies.

1204.3 A vehicle operated by a licensed sightseeing tour company shall have at least one (1) licensed sightseeing tour guide on board the vehicle during its sightseeing tours in the District. This requirement shall not apply to a vehicle that utilizes only audio recordings during the sightseeing tour; provided, that a driver of such a sightseeing tour vehicle who talks, lectures, or otherwise provides sightseeing information to passengers while the vehicle is in motion must be licensed as a sightseeing tour guide.

1204.4 Each sightseeing tour company shall ensure that its sightseeing tour vehicles comply with all District parking and traffic regulations.

- 1204.5 A sightseeing tour company licensee shall notify the Department within thirty (30) days after any change to the information provided on the application required by § 1202, including a change to the business address or telephone number of the licensee.
- 1204.6 The Director may, in connection with the consideration of a sightseeing tour company license application and from time to time during the license term, during regular business hours, require an applicant or licensee to make available to the Director, or the Director's agent, such information as the Director considers necessary to determine or verify whether the applicant or licensee has or retains the qualifications necessary for obtaining or retaining a license, or has violated or failed to comply with an applicable statute or regulation.
- 1204.7 Failure to make information available to the Director, failure to furnish to the Director information the Director is authorized to request by this chapter, or failure to furnish to the Director or to permit the Director to make copies of such records maintained by the applicant or licensee as the Director may specify, shall be grounds for denial, suspension, or revocation of a license.

1205 REQUIREMENTS FOR SIGHTSEEING TOUR GUIDES

- 1205.1 A sightseeing tour guide, while engaged in performing services as a sightseeing tour guide, shall conspicuously wear a badge bearing the licensee's license.
- 1205.2 No sightseeing tour guide shall cause a customer to be taken to a point of interest without providing that the customer shall be taken from that location to the next point of interest to be visited in the course of the sightseeing tour. This provision shall not apply if the customer fails to meet the sightseeing guide or vehicle at the predetermined time and location for departure to the next point of interest.
- 1205.3 No licensed sightseeing tour guide shall conduct a sightseeing tour unless the fees for the sightseeing tour have been disclosed in writing prior to the start of the tour.
- 1205.4 No sightseeing tour guide shall charge or attempt to charge a sum greater than the original charge for the tour, whether in payment for unsolicited merchandise, meals, or services, or for any other reason.
- 1205.5 A sightseeing tour guide licensee shall notify the Department within thirty (30) days after any change to the information provided on the application required by § 1203, including a change to the business address or telephone number of the licensee.

1206 COMPLAINT AND CONTACT INFORMATION

- 1206.1 All sightseeing tour companies or sightseeing tour guides shall furnish each person on a sightseeing tour with a card or ticket containing the following:

- (a) The name, address, and telephone number of a person or office authorized to receive complaints relative to the conduct or any part of a sightseeing tour; and
- (b) The name, address, and telephone number of the person, firm, or corporation responsible for the conduct and management of the tour.

1206.2 The authorized person or office specified under § 1206.1(a) shall be available to receive complaints during the regular business hours of each day that sightseeing tours are conducted by the sightseeing tour company.

1207 PROHIBITION ON VENDING

1207.1 No vending of any articles of merchandise shall be allowed by any licensee.

1208 DENIAL, SUSPENSION, OR REVOCATION OF LICENSES

1208.1 The Director may refuse to issue or renew, or may suspend or revoke, a sightseeing tour guide license or a sightseeing tour company license issued under this chapter for any reason set forth in this chapter or D.C. Official Code § 47-2844.

1208.2 The Director also may refuse to issue or renew, or may suspend or revoke, a sightseeing tour guide license or a sightseeing tour company license issued under this chapter on any of the following grounds:

- (a) Conviction of the licensee of a criminal offense involving fraudulent conduct;
- (b) Willful or fraudulent circumvention of a provision of District law or regulation relating to the conduct of the business;
- (c) Employment of a fraudulent or misleading device, method, or practice relating to the conduct of the business; or
- (d) The making of a false statement in the license application.

1208.3 All qualifications set forth in this chapter as a prerequisite to the issuance of a license shall be maintained for the entire license period. Failure to maintain a qualification during the license period shall be cause for suspension or revocation of the license.

1209 PENALTIES

1209.1 Each licensee shall be liable for all penalties provided for the violation of a provision of this chapter, whether the violation is committed by the licensee or the licensee's agent or employee.

- 1206.2 Pursuant to D.C. Official Code § 47-2846, a person violating any provision of this chapter shall, upon conviction, be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety (90) days, or both.
- 1209.3 A person whose license as a sightseeing tour company or sightseeing tour guide has been suspended or revoked, and who, after due notice in writing of the suspension or revocation, fails or refuses to surrender the license and badge as directed, or who violates any provision of this chapter, shall, upon conviction, be fined not more than two thousand dollars (\$2,000) or imprisoned for not more than ninety (90) days, or both.
- 1209.4 Civil fines, penalties, and fees may be imposed as alternative sanctions for an infraction of this chapter pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*) (“Civil Infractions Act”). Adjudication of an infraction of this chapter shall be pursuant to titles I-III of the Civil Infractions Act.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5134, Washington, D.C. 20024, or via e-mail at helder.gil@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar (\$1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at <http://dcra.dc.gov> by going to the “DCRA News” link and then clicking on the “Rulemaking” tab.

**OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT**

NOTICE OF PROPOSED RULEMAKING

The Deputy Mayor for Planning and Economic Development, pursuant to authority set forth in the NoMA Residential Development Tax Abatement Act of 2009, effective July 7, 2009 (D.C. Law 18-10; D.C. Official Code §§ 47-859.01 *et seq.*) and Mayor's Order 2010-61, dated April 6, 2010, hereby gives notice of intent to adopt the following amendment to Title 10 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. The purpose of the rulemaking is to add a new Chapter 62 to Subtitle B of Title 10 DCMR to provide tax abatements as incentives for the production of new housing in the NoMA area of the District of Columbia.

Title 10 DCMR is amended by adding a new Chapter 62 to Subtitle B to read as follows:

**CHAPTER B62 NoMA TAX ABATEMENTS FOR
NEW RESIDENTIAL DEVELOPMENT PROGRAM**

Secs.

- B6200 General Program Description
- B6201 Purposes
- B6202 Requirements for Tax Abatements for New Residential Developments
- B6203 Tax Abatements for All New Housing Projects in NoMA Area
- B6204 Abatement Caps
- B6299 Definitions

B6200 GENERAL PROGRAM DESCRIPTION

The NoMA Tax Abatements for New Residential Development Program is intended to provide tax abatements as incentives for the production of new housing in the NoMA area of the District of Columbia.

B6201 PURPOSE

The purpose of this chapter is to implement the NoMA Residential Development Tax Abatement Act of 2009 (D.C. Law 18-10; D.C. Official Code §§ 47-859.01 *et seq.*).

B6202 REQUIREMENTS FOR TAX ABATEMENTS FOR NEW RESIDENTIAL DEVELOPMENTS

- B6202.1 As a prerequisite to a property receiving a tax abatement under this chapter, the provisions of this section must be satisfied.
- B6202.2 A tax abatement under this chapter shall not be allowed for a project which is financed in any part by the Tax Increment Financing program established by the Tax Increment Financing Authorization Act of 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01 *et seq.*).
- B6202.3 A tax abatement under this chapter shall not be allowed for a property which receives relief as the result of the Distressed Properties Improvement Program under the Rental Housing Act of 1985 (D.C. Law 6-10; D.C. Official Code § 42-3508.02).
- B6202.4 A tax abatement under this chapter shall not be allowed for a property owned by the District of Columbia or one of its instrumentalities as of January 1, 2008.
- B6202.5 A tax abatement shall not be allowed unless the owner obtains the documents required by sections B6202.7 or B6202.9 of this chapter and submits to DMPED the letter and other documents required by section B6202.10 of this chapter prior to December 31, 2012.
- B6202.6 A tax abatement shall only be allowed if the building permit for the project's superstructure was issued after January 1, 2008.
- B6202.7 Except as provided in subsection B6202.8, prior to requesting certification of a tax abatement, the owner must receive:
- (a) A final building permit; or
 - (b) Letters from the building architect and DMPED certifying that the first level of concrete has been laid and the building has received building permits for both (1) the building's sheeting and shoring and excavation work and (2) the building's foundation to grade structural work. Certification by DMPED that the first level of concrete has been laid shall be given upon the submission by the owner of the standard test reports to DCRA. DMPED shall issue a certification letter regarding the first layer of concrete being laid within ten (10) business days after receipt of a written request from the owner and receipt of the standard concrete tests reports by DCRA, if such reports are required by DCRA.
- B6202.8 If an owner has obtained a certificate of occupancy prior to requesting certification of a tax abatement, section B6202.7 shall not apply.
- B6202.9 If a certificate of occupancy has been issued to the owner, the owner may submit a letter to DMPED requesting a tax abatement certification that the property is eligible for a certain annual dollar amount of residential tax abatement as set forth in the

NoMA Residential Development Tax Abatement Act of 2009 (D.C. Law 18-10; D.C. Official Code §§ 47-859.01 *et seq.*). The letter shall include the information required by section B6202.10(a)(i) - (iii), (v), (vi), (vii) and (viii), along with the documents required by section B6202.10(b)(iv)(A), (B) and (E), and section B6202.14.

- B6202.10 (a) If a certificate of occupancy has not been issued to the owner, the owner may submit a letter to DMPED requesting a tax abatement certification that the property is eligible for a certain annual dollar amount of residential tax abatement as set forth in the NoMA Residential Development Tax Abatement Act of 2009 (D.C. Law 18-10; D.C. Official Code §§ 47-859.01 *et seq.*).
- (b) The owner's request letter shall include the following information about the project:
- (i) The address of the project;
 - (ii) The square and lot number;
 - (iii) The proposed number of residential units;
 - (iv) A statement that the documents required by subsection B6202.7 of this chapter have been obtained and are attached;
 - (v) The total residential FAR square footage;
 - (vi) The annual dollar amount of residential tax abatement requested;
 - (vii) A statement that no financing is being provided under the Tax Increment Financing program referenced in subsection B6202.2 of this chapter; and
 - (viii) A statement that no relief is being provided under the Distressed Properties program referenced in subsection B6202.3 of this chapter;
- (c) The owner's request letter shall include the following attachments:
- (i) Three (3) dated photographs of the project taken within the ten (10) day period that precedes the date of submission of the owner's request letter. If the owner's request letter states that the first level of concrete has been laid, at least one (1) photograph must show the first level of concrete;
 - (ii) The documents specified by section B6202.7 (a) or (b) of this chapter;
 - (iii) Certification of the total residential FAR square footage certified by the project architect; and
 - (iv) The following items:

- (A) An area map showing the eligible area boundary and the project by location arrow;
- (B) A scaled site plan with building footprint. The site plan shall be submitted in both full size and eleven inch (11") by seventeen inch (17") format;
- (C) A tabulation of the zoning data for the project prepared and certified by the project architect, which shall include both the allowed and used lot occupancy, height, FAR, yards, courts, parking, and loading, and an indication of any zoning variance that is being requested;
- (D) A calculation of the total residential FAR square footage; and
- (E) A calculation of the annual dollar amount of residential tax abatement being requested, showing total residential FAR square footage, and tax abatement per square foot of total residential FAR square footage.

B6202.11 Within fifteen (15) business days after receipt of the owner's request letter and documents specified in subsections B6202.9 or B6202.10 of this chapter, DMPED shall:

- (a) Transmit a reservation letter to the owner stating:
 - (1) Whether the property is eligible for the applicable tax abatement;
 - (2) Whether the District of Columbia has reserved a tax abatement for the project; and
 - (3) If the District of Columbia has reserved a tax abatement for the property, the authorized annual dollar amount for the property.
- (b) If an owner's request letter is not complete, transmit a letter to the owner requesting the required additional information, which shall not affect the date of the submission by the owner of its request to DMPED for certification (unless such letter was significantly deficient);
- (c) Transmit a letter of partial reservation and partial non-certification, if the amount of the tax abatement authorized for the property partially exceeds the amount of abatement remaining under caps set forth in section B6204 of this chapter; or
- (d) Transmit a letter of non-certification, if the amount of the tax abatement requested exceeds the caps set forth in section B6204 of this chapter.

B6202.12 A tax abatement authorized by the Act and reserved by DMPED pursuant to section B6202.11 shall not be allowed:

- (a) Unless the first level of concrete for the project has been laid either before, or within six (6) months after, the date the reservation letter is transmitted by DMPED under subsection B6202.11 of this chapter, if certification was requested pursuant section B6202.9 of this chapter; or
- (b) If the project does not receive a certificate of occupancy within thirty-six (36) months after the date the reservation letter is transmitted by DMPED pursuant to section B6202.11 of this chapter; provided, that DMPED may extend the thirty-six (36) months period by up to an additional six (6) months if the building's construction has reached grade, as certified by the project architect and DCRA.

B6202.13 Valid and complete requests for certification shall be reviewed by DMPED pursuant to section B6202.11 of this chapter in the order in which they are received; provided, however, that any project which has achieved the requirements of section B6202.7, B6202.9, or B6202.10 prior to the effective date of this chapter shall be given preference for review and certification of eligibility in order of the date the requirements of sections B6202.9 or B6202.10 were achieved; and provided further, that this preference shall be applicable beginning on the date this chapter becomes effective and only for the first thirty (30) days thereafter.

B6202.14 Once the certificate of occupancy has been issued by DCRA and the owner has complied with sections B6202.9 or B6202.10, the owner shall submit the following documents to DMPED:

- (a) A copy of the certificate of occupancy;
- (b) A calculation of the "as-built" total residential FAR square footage certified by the project architect; and
- (c) A schedule of the dollar amounts for the property's twenty (20) semiannual tax abatements for the ten (10) year tax abatement period beginning with the first full six (6) month period of the tax year (October 1 through March 31 or April 1 through September 30) following the issuance date of the certificate of occupancy.

B6202.15 Upon receipt of the documents required under section B6202.14, DMPED shall certify the total residential FAR square footage and, within twenty (20) business days:

- (a) Issue to the owner a letter certifying the tax abatement pursuant to D.C. Official Code § 47-8579.03; and
- (b) Notify OTR of the owner's eligibility for the annual dollar amount of residential tax abatement, provided that such annual dollar amount shall not exceed the amount reserved under B6202.11, and provide OTR with a

schedule of the tax abatement dollar amounts to be reflected on the property's twenty (20) semiannual tax bills issued during the ten (10) year tax abatement period.

- B6202.16 After receiving notification from DMPED under subsection B6202.15, OTR shall reflect the tax abatement in a real property tax bill issued for the first full six (6) month period of the tax year (October 1 through March 31 or April 1 through September 30) following the issuance date of the certificate of occupancy.
- B6202.17 If a condominium regime is established at the property pursuant to District of Columbia law and condominium units are sold, the tax abatement shall be prorated among the residential unit owners of the condominium in proportion to their percentage interest in the condominium regime, and the tax abatement shall accrue only to residential unit owners. DMPED shall allocate the tax abatement to the individual units, based on a schedule of the dollar amounts for the semiannual tax abatements for the then remaining portion of the ten (10) year tax abatement period. The owner shall provide this schedule to DMPED at the time of the unit sale, DMPED shall certify such allocation to OTR, and OTR shall notate the tax bills for such units to specifically reflect the abatement.
- B6202.18 The imposition of a penalty or disallowance of the tax abatement by DMPED pursuant to the provisions of this chapter shall be subject to the notice and hearing provisions of the Civil Infractions Act of 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*), and its implementing regulations.

B6203 TAX ABATEMENTS FOR ALL NEW HOUSING PROJECTS IN NOMA AREA

- B6203.1 Subject to the requirements of section B6202 of this chapter, an annual abatement of the real property tax imposed pursuant to D.C. Official Code § 47-811 for an eligible property shall be allowed in an amount computed as one dollar and fifty cents (\$1.50) multiplied by the building's total residential FAR square footage as certified by the project architect and DMPED pursuant to subsection B6202.15 of this chapter; provided, that:
- (a) If a certificate of occupancy permits the use of only part of the residential portion of the eligible property, the amount of the abatement shall be computed as one dollar and fifty cents (\$1.50) per each residential FAR square foot that is subject to the certificate of occupancy.
 - (b) The tax abatement for an eligible real property allowed by this section shall expire at the end of the tenth (10th) tax year after the abatement was first reflected in a real property tax bill issued pursuant to section B6202.14 of this chapter; and
 - (c) If, during a tax year for which the tax abatement is authorized by this section the property for which the abatement was granted contains fewer than ten (10)

dwelling units, the abatement shall not be allowed, such disallowance to become effective during the first six (6) month period following the date on which such property first contained less than ten (10) dwelling units.

B6204 ABATEMENT CAP

B6204.1 DMPED may approve up to five million dollars (\$5,000,000) in annual tax abatements for the Eligible Area, up to the fifty million dollars (\$50,000,000) cumulative tax abatement cap.

B6299 DEFINITIONS

B6299.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

“Act” - the NoMA Residential Development Tax Abatement Act of 2009, effective July 7, 2009 (D.C. Law 18-10; D.C. Official Code §§ 47-859.01 *et seq.*).

“Certificate of occupancy” - the certificate of occupancy which permits the use of all or part of the residential areas of the building.

“Certified by the project architect” - the architect has affixed his or her stamp to the document.

“DCRA” - the Department of Consumer and Regulatory Affairs.

“DMPED” - the Deputy Mayor for Planning and Economic Development or designee.

“Eligible Area” - those portions of Wards 5 and 6 which comprise the geographic area defined by a line that starts at the center of the street at the intersection of Massachusetts Avenue, N.E., and 1st Street, N.E.; continuing north along the center line of 1st Street, N.E., to the center line of H Street, N.E.; continuing east along the center line of H Street, N.E., to the center line of 2nd Street, N.E.; continuing north along the center line of 2nd Street, N.E., to the center line of K Street, N.E.; continuing east along the center line of K Street, N.E., to the center line of 3rd Street, N.E.; continuing north along the center line of 3rd Street, N.E. (and including Square 0774, Lot 0058), to the center line of M Street, N.E.; continuing east along the center line of M Street, N.E., to 4th Street, N.E.; continuing along the center line of 4th Street, N.E., to the center line of Florida Avenue, N.E.; continuing northwest along the center line of Florida Avenue, N.E., until it crosses the WMATA rail line; continuing northeast along the boundary of the WMATA rail line until it crosses R Street, N.E.; continuing west along the center line of R Street, N.E., to Eckington Place, N.E.; continuing south along the center line of Eckington Place, N.E., to the center line of Q Street, N.E.; continuing west along the center line of Q Street, N.E. (and including Square 3519, lots 0043, 0063, and 0070), to the center line of North Capitol Street (but excluding Square 3516, lots 0104 through 0114 and 0118 through 0133, and 0807); continuing south along the center line of North Capitol Street to the center line of Eye Street N.W.; continuing west along the center line of Eye Street, N.W., to the center line of New Jersey Avenue, N.W.; continuing southeast along the center line of New Jersey Avenue, N.W., to the

center line of Massachusetts Avenue, N.W., continuing southeast along Massachusetts Avenue, N.W., to the center line of 1st Street, N.E. (the starting point).

“Eligible real property” - real property that:

- (a) Is in the Eligible Area;
- (b) Is classified, in whole or in part, as Class 1 or Class 2 property under D.C. Official Code § 47-813(c-7);
- (c) Is improved by new structures or by previously uninhabitable structure(s) which undergo substantial renovation for residential use; and
- (d) Has ten (10) or more units devoted to residential use.

“Final building permit” - the final building permit issued to the owner for the project including mechanical, electrical, plumbing, heating, ventilation, and air conditioning systems, and superstructure; provided, that permits for the installation of electrical, plumbing, and mechanical systems shall be allowed to follow after the final building permit is issued to the owner; provided further, that revision permits shall be allowed to address customary deviations due to construction conditions and other modifications.

“First level of concrete has been laid” - the foundation to grade permit has been issued, the pouring of concrete for the floor of the lowest level of the structure to be constructed (that is, the cellar, basement, sub-cellar, sub-basement, or similar level) has commenced and the concrete work testing reports have been submitted to DCRA.

“Gross floor area” - has the meaning set forth in 11 DCMR § 199.1.

“OTR” - the District of Columbia Office of Tax and Revenue.

“Owner” - the property owner or person authorized by the owner.

“Rehabilitation” - the substantial renovation of a structure for housing for sale or rental which is not habitable for dwelling purposes because it is in substantial violation of the Housing Regulations (title 14 of the District of Columbia Municipal Regulations) .

“Residential use” - has the meaning set forth in 11 DCMR § 1799.1.

“Total residential FAR square footage” - the total gross floor area of the project that is devoted to residential uses, including common areas and areas devoted to accessory uses to the residential use of the building or a portion thereof, based on the plans and drawings submitted in conjunction with the building permit application. (The terms “gross floor area” and “residential use” shall have the meaning set forth in 11 DCMR §§ 199.1 and 1799.1, respectively.)

“Units devoted to residential use” - (a) occupied units that were constructed, rehabilitated, or converted for residential use, or (b) unoccupied units that are in the process of being constructed, rehabilitated, converted, marketed, leased, or sold for residential use, in either event pursuant to a

building permit for such residential use. The use of an eligible unit for a “home occupation,” as such term is defined in the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), shall not make a unit that is otherwise eligible ineligible.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments, in writing, to the Office of the Deputy Mayor for Planning and Economic Development, 1350 Pennsylvania Avenue, NW, Suite 317, Washington, D.C. 20004. Comments must be received no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. A copy of this proposed rulemaking may be obtained at the same address.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth in section 705 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5607.05 (2001)), and section 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231.25 (2009 Supp.)), hereby gives notice of intent to establish a new chapter 58 of Title 26A and a new section 169 of chapter 1 of Title 26B, of the District of Columbia Municipal Regulations, in not less than thirty days from the date of the publication of this notice in the *D.C. Register*. The new chapter 58 of Title 26A and the new section 169 of chapter 1 of Title 26B will set forth certain guidelines and prohibitions regarding the use of senior-specific certifications, designations, and credentials by insurance producers, and investment advisers and investment adviser representatives. The Commissioner has determined that this proposed rulemaking is in the public interest, appropriate for the protection of investors, and consistent with the purposes fairly intended by the applicable statutory provisions.

Title 26A (Insurance) and Title 26B of the District of Columbia Municipal Regulations are amended as follows:

A. Title 26A is amended by adding a new chapter 58 read as follows:

CHAPTER 58: SENIOR-SPECIFIC CERTIFICATIONS, DESIGNATIONS AND CREDENTIALS

5800 APPLICABILITY

5800.1 This chapter shall apply to any solicitation, sale, or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer.

5801 PROHIBITED USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

5801.1 The use, directly or indirectly, through publications or writings, or by issuing or promulgating analyses or reports, of a senior-specific certification or professional designation by any person in connection with the solicitation, sale, or purchase of life insurance or annuity products; or in providing advice as to the value or advisability of purchasing or selling life insurance or annuity products that indicates

or implies that the insurance producer has special certification or training in advising or servicing seniors or retirees, in such a way as to mislead, constitutes an unfair and deceptive act or practice in the business of insurance within the meaning of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code § 31-2231 *et seq.* (2001)).

5801.2

The uses prohibited by subsection 5801.1 include, but are not limited to, the following:

- (a) Use of a certification or professional designation by an insurance producer who has not actually earned the certification or professional designation or is otherwise ineligible to use the certification or designation;
- (b) Use of a nonexistent or self-conferred certification or professional designation;
- (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer using the certification or designation does not have; and
- (d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
 - (1) Is primarily engaged in the business of instruction in sales or marketing;
 - (2) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
 - (3) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
 - (4) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

5801.3

There is a rebuttable presumption that a certifying or designating organization is not disqualified solely based on subsection 5801.2(d) when the certification or designation issued by the organization:

- (a) Does not primarily apply to sales or marketing; and

- (b) When the organization or the certification or designation in question has been accredited by:
 - (1) The American National Standards Institute;
 - (2) The National Commission for Certifying Agencies;
 - (3) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes;" or
 - (4) Any other nationally-recognized accreditation organization designated by the Commissioner.

5801.4

In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors or retirees, factors to be considered shall include:

- (a) Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (b) The manner in which those words are combined.

5801.5

For the purposes of this chapter, a certification or professional designation does not include a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency, unless it is used in a manner that would confuse or mislead a reasonable consumer, if the job title:

- (a) Indicates seniority or standing within the organization; or
- (b) Specifies an individual's area of specialization within the organization.

5899**DEFINITIONS**

5899.1

For the purposes of this chapter, the following terms shall have the means ascribed:

"Financial services regulatory agency" - includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-

dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

“Insurance producer” - a person required to be licensed under the laws of the District of Columbia to sell, solicit, or negotiate insurance, including annuities.

B. Title 26B, chapter 1, is amended by adding a new section 169 to read as follows:

**169 SENIOR-SPECIFIC CERTIFICATIONS, DESIGNATIONS,
AND CREDENTIALS**

169.1 The use, directly or indirectly, of a certification, professional designation, or credential by any person in connection with the offer, sale, or purchase of securities, or the providing of advice as to the value of or the advisability of investing in, purchasing, or selling securities that indicates or implies that the user has special certification or training in advising or servicing seniors or retirees, in such a way as to mislead, constitutes an unethical and dishonest practice pursuant to section 207 of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5602.07(a)(9) (2001)).

169.2 The uses prohibited by subsection 169.2 include, but are not limited to, the following:

- (a) Use of a certification, professional designation, or credential by a person who has not actually earned the certification, professional designation, or credential or is otherwise ineligible to use the certification, professional designation, or credential;
- (b) Use of a nonexistent or self-conferred certification, professional designation, or credential;
- (c) Use of a certification, professional designation, or credential, that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification, professional designation, or credential does not have; or
- (d) Use of a certification, professional designation, or credential obtained from an organization that:
 - (1) Is primarily engaged in the business of instruction in sales or marketing; or

- (2) Does not have reasonable standards and procedures for assuring the competence of those persons to whom it provides certifications, designations, or credentials.

169.3

There is a rebuttable presumption that a designating, certifying, or credentialing organization is not disqualified solely based on subsection 169.2(d) if:

- (a) The certification, designation, or credential does not primarily apply to sales or marketing; and
- (b) The organization has been accredited by:
 - (1) The American National Standards Institute;
 - (2) The National Commission for Certifying Agencies;
 - (3) An organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes"; or
 - (4) Any other nationally-recognized accreditation organization designated by the Commissioner.

169.4

In determining whether a combination of words or an acronym constitutes a certification, professional designation, or credential indicating or implying that a person has special certification or training in advising or servicing seniors or retirees, factors to be considered shall include:

- (a) The use of words such as "senior" and "retirement" combined with words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," or "planner" in the title of the certification, professional designation, or credential; and
- (b) The context or manner in which those words are used together.

169.5

For the purposes of this section, a certification, professional designation, or credential does not include a job title within a financial services organization that is licensed or registered by a state or federal regulatory agency, unless it is used in a manner that would confuse or mislead a reasonable consumer, if that job title:

- (a) Indicates seniority or standing within the organization: or
- (b) Specifies an individual area of specialization within the organization.

- 169.6 Nothing in this rule shall limit the Commissioner's authority to enforce the provisions of the Securities Act of 2000, D.C. Official Code § 31-5601.01 *et seq.* ("Securities Act of 2000"), and the implementing regulations of the Securities Act of 2000.

Persons desiring to comment on these proposed rules should submit comments in writing to Gennet Purcell, Commissioner, Department of Insurance, Securities, and Banking, 810 First Street, N.E., Suite 701, Washington, D.C. 20002. Comments must be received not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the Department at the address above.